IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

MICAH RAY KILGORE	§	
v.	§	CIVIL ACTION NO. 6:12cv484
ANDREW KIRBY, ET AL.	§	

MEMORANDUM ADOPTING INITIAL REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Micah Kilgore, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. As Defendants, Kilgore names officers Andrew Kirby, Jennifer Chandler, and Matthew Carmichael, substitute counsel Rachel Gruetzner, and regional grievance coordinator Linda Richey.

Kilgore complained about an alleged of force incident occurring on February 5, 2012. After an evidentiary hearing, the Magistrate Judge issued a Report recommending dismissal of all of the Defendants except for Officer Kirby, whom Kilgore says sprayed him with an entire canister of pepper spray for the purpose of causing injury. Kilgore received a copy of the Magistrate Judge's Report on March 5, 2013, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. <u>Douglass v. United Services Automobile Association</u>, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate

Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is

correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), cert. denied, 492 U.S. 918, 109

S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of

review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 14) is ADOPTED as

the opinion of the District Court. It is further

ORDERED that the Plaintiff's claims against the Defendants Jennifer Chandler,

Mathew Carmichael, Rachel Gruetzner, and Linda Richey are hereby DISMISSED with prejudice

as frivolous and for failure to state a claim upon which relief may be granted. These Defendants are

hereby DISMISSED as parties to this lawsuit. The dismissal of these claims and parties shall have

no effect upon the Plaintiff's claims against Officer Kirby. Finally, it is

ORDERED that the dismissal of these claims and parties shall not count as a strike

for purposes of 28 U.S.C. §1915(g) unless otherwise ordered by the Court.

It is SO ORDERED.

SIGNED this 30th day of April, 2013.

MICHAEL H. SCHNEIDER

UNITED STATES DISTRICT JUDGE

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